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Patent
Attorney Docket No. GEMS8081.294

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Debbins, et al.
Serial No. : 09/839,055
Filed : April 20, 2001
For : APPLICATION DEVELOPMENT SYSTEM FOR A
MEDICAL IMAGING SYSTEM
Group Art No. : 2191
Examiner : STEELMAN, Mary J..

CERTIFICATION UNDER 37 CFR 1.8(a) and 1.10

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. The request is being filed with a Notice of Appeal. The review is requested for the reasons set forth hereinafter.

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REMARKS

Claims 1, 2, 5, 7-13, 15, 16, and 21-25 are under final rejection. Claims 1, 2, 5, 7-12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Williams (USP 5,850,548) in view of Schneider et al. (USP 6,718,533). Claims 21 and 22 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Williams, Schneider et al., and further in view of Li et al. (USP 5,602,934). Claims 13, 15, 16, and 23-25 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Li et al., Williams, and further in view of Kodosky (USP 6, 173, 438).

In maintaining the rejection of claim 1 the Examiner concluded that "it would have been obvious, to one of ordinary skill in the art, at the time of the invention to have modified Williams' invention of program development to include downloading a serialized component when developing an application that could include medical imaging, as taught by Schneider because both inventions deal with application development using components, allowing for reusable software (Schneider: Col. 5, line 65) and providing an (Schneider: Col. 6, lines 1-2) 'intuitive approach to developing systems...'." ADVISORY ACTION, July 14, 2005, pp. 2-3. The Examiner's conclusion, however, ignores elements of claim 1. Specifically, the Examiner has failed to show that the art of record either teaches or suggests "a component for serializing and downloading the executable application segment to the medical imaging system to modify the executable application in real-time." APPLICATION, U.S. Ser. No. 09/839,055, claim 1.

Applicant does not dispute that the art of record discloses a system for visual programming utilizing object-oriented programming languages, such as JAVA. Moreover, Applicant does not dispute that the art of record discloses a method for building a real-time control system. The art of record, when combined, suggests a real-time control system that utilizes a visual object-oriented programming technique. However, the combination fails to teach or suggest modification of an executable application developed using a visual object-oriented programming language by developing an application segment using a visual object-oriented programming language,

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and then serializing and downloading the newly developed application segment, which is in executable language, to a medical imaging system to modify the existing executable application in real-time.

Williams discloses a computer system for development of programs using a visual development environment. Schneider et al. discloses a method for developing and operating a real-time application on a development station using a visual development tool. The application is compiled and downloaded to a computer for execution. Specifically, Schneider et al. discloses that components are created and compiled, and then downloaded to a computer. See SCHNEIDER ET AL., col. 31, ll. 49-65 and col. 35, ll. 54-65. The components are then linked to together. Id. Execution of the application is then carried out. Id. In this regard, the reference teaches development of components for an application, downloading of the components, linking of the components on the downloaded-to computer, and then execution of the application.

In other words, linking of the application components occurs after the components have been downloaded. Thus, when the components are downloaded, they are not in an executable format. The components must be linked before they can become an executable application. Thus, the reference discloses the downloading of application components, not the downloading of an executable application.

Moreover, Schneider et al. discloses that the components are created and compiled on a development station along with a system diagram of the full system. Id. Thus, the reference discloses that all the components of a given application are downloaded. There is no teaching or suggestion that anything less than the componentry for the entire application is downloaded. In this regard, Schneider et al. fails to teach or suggest the creation of an executable application segment, serializing of that executable application segment, and the downloading of that segment to modify an executable application. At best, the reference discloses creating of objects that may be linked, downloading those objects un-linked, and then linking those objects after they have been downloaded. As such, it is clear that the reference does not teach or suggest that which is being claimed.

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Therefore, as the Examiner has misapplied the factual teaching/suggestions of Schneider et al., Applicant hereby requests pre-appcal conference review of the Examiner's conclusion that Schneider et al. in combination with Williams renders the pending claims unpatentable.

Claim 13 stands rejected based on the three-way combination of Williams, Li, and Kodosky. The Examiner has again relied upon Williams for its teaching of visual programming. Williams, however, fails to teach or suggest that such visual programming could be used develop an application for a pulse sequence server. The Examiner has concluded that the Williams system, as a generic tool, could be applied to a medical imaging scanner. Applicant disagrees.

One skilled in the art will readily appreciate that a pulse sequence server designed to control the application of RF and gradient pulses is a very specific application that has particulars that make it unique in the field of computer programming. Moreover, the motivation to extend the technique of Williams must come from Williams itself. The Examiner cannot simply state that since Williams relates to computers and medical scanners have computers, there would be a motivation to combine. To support an obviousness rejection, the motivation for the combination must come from the references themselves – not hindsight.

The Examiner also relied upon Li. Li discloses the particulars of an MR system. However, as acknowledged by the Examiner, Li fails to teach or suggest visual object-oriented programming of such a system. Again, the Examiner has inferred a motivation to combine simply because Li discloses an MR system. Again, however, the motivation must come from the references themselves. One skilled in the art, absent Applicant's own disclosure, would not be motivated to use the system of Williams with Li, or vice-versa, simply because Li discloses a computer-driven MR system. Under the Examiner's theory, Li could be combined with any reference to support a rejection of an MR related claim. As the Examiner should be aware, the MPEP requires a much more stringent standard to combine references.

Lastly, the Examiner relied upon Kodosky. Like Williams, Kodosky fails to suggest implementation of its invention with an MR system. As the Examiner did with

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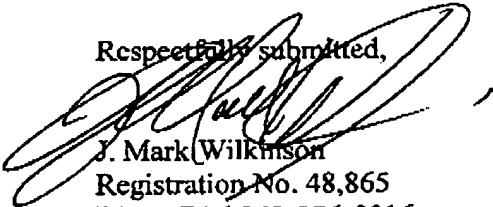
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Williams, the Examiner has relied upon Kodosky simply because the Examiner concluded that it teaches one of the elements of claim 13. The Examiner, however, has ignored that there must be a motivation to combine the teachings of references. The Examiner cannot use the claim as a list of elements that simply can be found in the art. Such would be the application of impermissible hindsight and dismiss the requirement that the references provide a suggestion for their combination. As the references lack such suggestion, the Examiner's rejection cannot be sustained.

Accordingly, as the combination of Williams, Li, and Kodosky fail to suggest or provide motivation for their combination as well as fail to teach or suggest each and every element called for in claim 13, Applicant hereby requests pre-appeal review of the rejection of claim 13.

Applicant appreciates consideration of these remarks and cordially invites the members of the pre-appeal conference to contact the undersigned should that have any questions or would like to discuss the matter further.

Respectfully submitted,



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